

D. The *Adarand* Decision Should Not Negatively Impact Rural Telephone Companies

In the wake of *Adarand Constructors, Inc. v. Peña*,⁴⁵ the Commission eliminated its gender and race-based auction provisions. Mysteiously, the Commission also eliminated any special provisions for rural telephone companies. From *Adarand* forward, the Commission adopted provisions only for “small businesses” and “entrepreneurs.”⁴⁶ As RTG has previously advised the Commission, rural telephone companies are not a suspect class and should not be “written out” of Section 309(j).

As RTG previously advised the Commission, the Commission should not force rural telephone companies to meet the small business definition *du jour*; instead, such companies should have their own definition to determine eligibility for special preferences.⁴⁷ Accordingly, the Commission should adopt designated entity provisions that benefit rural telephone companies in addition to small businesses.

E. The Timing of the Auctions Has Adversely Affected Rural Telephone Company Participation

The timing of the auctions has negatively impacted rural telephone company and other designated entity participation. In a number of services, the Commission licensed the larger geographic areas, or non-designated entity blocks, long before it auctioned the licenses designed to provide designated entities with opportunity. For example, the Commission licensed the A and B block PCS licenses 14 months before the C Block broadband PCS licenses and almost two years before the F Block PCS licenses. This head start places rural telephone companies and

⁴⁵ 115 S. Ct. 2097 (1995).

⁴⁶ Section 309(j) does not even recognize a special class of “entrepreneurs.”

⁴⁷ See Reply Comments of RTG in WT Docket No. 97-82 (filed April 16, 1997).

other designated entities at a serious competitive disadvantage relative to their larger and more established competitors.⁴⁸ Faced with such an unfair lead, many designated entities may forego attempting to compete in a service. To remedy this situation, the Commission should auction all competing service licenses at the same time.

III. ADDITIONAL ISSUES

A. The Competitive Bidding Process Has Been Moderately Successful at Attracting New Companies and Promoting Deployment of New Technology

Overall, the competitive bidding process has been only moderately successful at attracting new companies and promoting the deployment of new technology. For example, lotteries actually attracted more new entrants than competitive bidding. Many of the “new entrants” are not viable businesses as evidenced by their difficulties in meeting their installment obligations.⁴⁹ As RTG noted above, the timing of the auctions has adversely affected the introduction of new services by giving a few licensees a competitive head start.

While auctions facilitate swift licensing of a new service, competitive bidding does not actually speed the development of that service. Thus where the technology is not well defined and no equipment exists for service, auctions do not lead to the development of the service, but rather, discourage participation and efficient deployment.

B. Designated Entity Provisions Have Not Caused Wide Dissemination of Licenses

The designated entity provisions as a whole have not led to the wide dissemination of licenses. The provisions have led to a lot of shuffling of ownership interests and the creation of

⁴⁸ The BTA-based narrowband PCS licensees face a similar disadvantage.

⁴⁹ See *Installment Payment Order*, *supra*.

new entities, but the provisions have not resulted in the dissemination of licenses to a wide range of licensees.

In order to ensure wide dissemination of licenses, the Commission should license new services on the basis of smaller geographical areas. MSAs and RSAs are more closely aligned with communities of common interest and allow small and local companies to acquire the licenses to service their own areas.

C. Factors Affecting Auction Revenue Generation

In the *Notice*, the Commission enumerates a number of factors affecting revenue generation, including geographic area covered, and seeks information on how the auction rules have affected revenues in the first auctions. With respect to geographic size, the auctions have demonstrated that the smaller the license area, the greater the revenue generation. This follows because, the smaller the area, the more companies can participate in the auction and the more vigorous will be the competition for any given license.⁵⁰

In addition to the factors listed in the *Notice*, the timing of a particular auction affects how much revenue it will generate. Specifically, the more time that businesses have to form business plans and secure capital, the greater the revenues. Where there is very little time for business to assess the Commission's service and licensing rules, auction revenues will suffer.⁵¹ As noted above, an auction may generate less revenue if competing licensees in the same service have previously been issued licenses and have a substantial head start. In addition, regulatory

⁵⁰ See Comments of RTG in GN Docket No. 96-228 at 3-7 (filed December 4, 1996).

⁵¹ See, e.g., *WCS Auction Closes*, Pub. Notice, DA 97-886 (rel. April 28, 1997). Because of the Congressional deadlines imposed on this auction, there was very little time to form and implement business plans prior to the auction.

certainty, or the lack thereof, also affects the value of spectrum and the revenue generated by an auction.

D. Bidder Cost of Preparation and Participation

Participation in a Commission auction imposes substantial costs on bidders, especially small rural telephone companies and small businesses. Small companies, lacking a large staff, must either divert a substantial percentage of their personnel to the auction process or they must hire additional personnel during the auction. These personnel costs increase as an auction continues over time. In addition, the Commission charges \$2.30 a minute for 900 number connection time to participate in an auction. This fee, far in excess of the Commission's actual cost, is a substantial and unnecessary burden on small companies.

IV. PROPOSED RULE/STATUTORY CHANGES

In order to fulfill the objectives of Section 309(j) of the Act and to improve the competitive bidding process, the Commission should adopt the recommendations set forth above. Most importantly, the Commission should: (1) adopt provisions for rural telephone companies; (2) adopt meaningful performance requirements; (3) license service based on MSAs and RSAs; and, (4) auction all licenses for the same service at the same time.

A. Special Provisions for Rural Telephone Companies

As noted above, the Commission should provide bidding credits and installment payments for rural telephone companies. More importantly, the Commission should allow licensees that partition to rural telephone companies a credit toward their federal Universal Service Fund ("USF") contribution. Such an incentive would encourage licensees to partition to

an entity that will actually provide service to rural America thereby facilitating the provision of universal service under both Section 309(j)(3)(A) and Section 245(b)(3) of the 1996 Act.

B. Meaningful Performance Requirements

As discussed above, in order to satisfy the mandate of Section 309(j) of the Act, the Commission should adopt “unserved area” licensing to prevent spectrum in rural areas from remaining fallow or under used. This is the most important rule change that the Commission could make to ensure the rapid deployment of service to rural America.

CONCLUSION

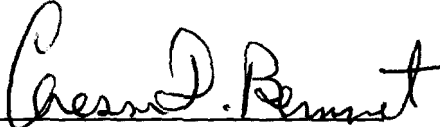
The Commission’s competitive bidding process has improved the overall efficiency of the award of licenses and shorted the time between the authorization of a service and the issuance of a license. The Commission’s competitive bidding rules, however, have not ensured rural telephone companies an opportunity to participate in new spectrum-based services, nor have they ensured the rapid deployment of such services to rural areas. Indeed, the Commission’s competitive bidding procedures are not designed to benefit rural areas or rural spectrum users. The Commission’s lack of meaningful performance requirements fails to ensure the prompt delivery of spectrum-based services to rural areas. Geographic partitioning alone will not ensure the deployment of spectrum-based services to rural Americans.

In order to improve the process and to satisfy the mandate of Section 309(j) of the Act, the Commission should adopt the recommendations contained herein and discussed in the

comments and reply comments referenced above. Specifically, the Commission should tailor some provisions to benefit rural telephone companies and adopt unserved area rules whereby applicants can recover and utilized under used spectrum.

Respectfully submitted,

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Exhibit A**Comments Filed by the Rural Telecommunications Group Pertaining to Section 309(j) of the Act**

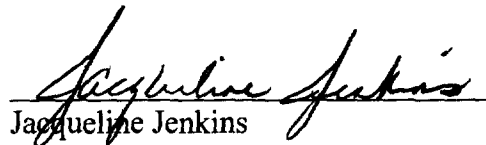
Name	Name of Proceeding	Docket Number	Date Filed
Comments of the Rural Telecommunications Group	Amendment of the Commission's Rules to Establish New Personal Communications Services, Narrowband PCS Implementation of Section 309(j) of the Communications Act - Competitive Bidding, Narrowband PCS	GEN Dkt No. 90-314 ET Dkt No. 92-100 PP Dkt No. 93-253	June 18, 1997
Reply Comments of the Rural Telecommunications Group	Rulemaking to Amend Parts 1, 2, 21 and 25 of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band to relocate the 29.5-30.0 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services	CC Docket No. 92-297	May 6, 1997
Comments of the Rural Telecommunications Group	Amendment of the Commission's Rules Regarding Multiple Address Systems	WT Docket No. 97-81	April 21, 1997
Reply Comments of the Rural Telecommunications Group	Amendment of Part 1 of the Commission's Rules -- Competitive Bidding Proceeding	WT Docket No. 97-82	April 16, 1997
Reply Comments of the Rural Telecommunications Group	Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service (WCS)	GN Docket No. 96-228	December 16, 1996
Comments of the Rural Telecommunications Group	Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service (WCS)	GN Docket No. 96-228	December 4, 1996
Comments of the Rural Telecommunications Group	Geographic Partitioning and Spectrum Disaggregation by 900 MHz Specialized Mobile Radio Service Major Trading Area Licensees Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band	RM-8887 PR Docket No. 93-144 RM-8117, RM-8030 RM-8029	October 21, 1996

Comments of the Rural Telecommunications Group	Section 257 Proceeding to Identify and Eliminate Market Entry Barriers for Small Businesses	GN Docket No. 96-113	September 27, 1996
Reply Comments of the Ad Hoc Rural Telecommunications Group	Geographic Partitioning and Spectrum Disaggregation by Commercial Mobile Radio Services Licensees	WT Docket No. 96-148	August 30, 1996
	Implementation of Section 257 of the Communications Act— Elimination of Market Entry Barriers	GN Docket No. 96-113	
Comments of the Rural Telecommunications Group	Establishing Rules and Policies for the Use of Spectrum for Mobile Satellite Service in the Upper and Lower L-Band	IB Docket No. 96-132	August 29, 1996
Reply Comments of the Ad Hoc Rural Telecommunications Group	Rulemaking to Amend Parts 1, 2, 21 and 25 of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band, to Reallocate the 29.5-30.0 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services	CC Docket No. 92-297	August 22, 1996
Comments of the Ad Hoc Rural Telecommunications Group	Rulemaking to Amend Parts 1, 2, 21 and 25 of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band, to relocate the 29.5-30.0 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services	CC Docket No. 92-297	August 12, 1996

CERTIFICATE OF SERVICE

I, Jacqueline Jenkins, an employee in the law firm of Bennet & Bennet, PLLC hereby certify that a copy of the foregoing "Comments of the Rural Telecommunications Group" have been served via hand delivery this 1st day of August, 1997 on the following:

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